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10/652,860	08/29/2003	John Tomczyk	10320.57USII	1000
23552	7590	02/24/2006	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			BRUENJES, CHRISTOPHER P	
			ART UNIT	PAPER NUMBER
			1772	

DATE MAILED: 02/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/652,860	TOMCZYK, JOHN	
	<b>Examiner</b> Christopher P. Bruenjes	<b>Art Unit</b> 1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 06 January 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-89 is/are pending in the application.
- 4a) Of the above claim(s) 1-12, 14-18, 27-39, 41-46 and 83-88 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 13, 19-26, 40, 47-82 and 89 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>20050207</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____ .

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election without traverse of Group II, claims 13, 19-26, 40, 47-82, and 89 in the reply filed on January 6, 2006 is acknowledged.
2. Claims 1-12, 14-18, 27-39, 41-46, and 83-88 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on January 6, 2006.

***Specification***

3. The disclosure is objected to because of the following informalities: In the second sentence of the specification application number 09/566,363 is listed as a pending unpublished application that is related to the invention. However, this appears to be a typing error and should be application number 09/566,063.

Appropriate correction is required.

***Claim Objections***

Art Unit: 1772

4. Claims 21, 49, and 59 are objected to because of the following informalities: "APET" and "E-beam-curable coatings" should be written out like they are in claim 67 to render the claim clearer. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 13, 40, and 89 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

These claims are dependent on claims that have been withdrawn. Therefore, the claims are vague and indefinite, and the claims should either be cancelled or rewritten as independent claims.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 1772

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 13, 19-26, 40, 47-54, 65-80, and 89 are rejected under 35 U.S.C. 102(e) as being anticipated by Guest (USPN 6,490,093).

Regarding claims 13, 40, and 89, the products formed by the methods of claims 1, 27, and 83 have the same structural limitations as the product claimed in claim 47, therefore claims 13, 40, and 89 will be rejected in the same manner as claim 47. Regarding claims 13, 19, 40, 47, and 65, Guest anticipates a product for displaying images created with textured or roughened material such as lenticular lens material (see abstract). The product comprises a plastic display surface (reference number 12, Figure 2 and col.5, l.41-45) and a closed surface textured or roughened insert (reference number 20, Figure 2) in abutting contact with the display surface. The insert includes a textured or roughened layer (reference number 22, Figure 2) having a first surface (the top surface of reference number 22 in Figure 2) and a second surface (the bottom surface of reference number 22 in Figure 2). An ink layer (reference

Art Unit: 1772

number 28, Figure 2) is bonded to the second surface of the textured or roughened layer, and a bonding and thermal protection substrate (reference number 30, Figure 2) is attached to and covering the ink layer. The product further comprises a means for retaining the insert in the abutting contact position on the display surface by bonding to the display surface.

Regarding claims 20, 48, and 66, the retaining means comprises a bonding interface between the substrate and material of the plastic display surface (col.13, l.31-40). Regarding claims 21, 49, and 67, the substrate comprises a material selected from the group consisting of polypropylene, polyester, polyvinyl chloride, polycarbonate, and APET (col.15, l.36-40) and UV-curable coatings (col.12, l.15-22). Regarding claims 22, 50, and 68, the substrate has a thickness in the range of 0.0127 to 0.0762 millimeters, which is 0.5 to 3 mils (col.13, l.25-28).

Regarding claims 23-24 and 51-52, the retaining means comprises frame members connected to the display surface and abuttingly contacting exposed edges of the insert, in which the frame members extend a predetermined retention distance onto the first surface adjacent each of the exposed edges (col.9, l.1-26 and reference numbers 14, 16, and 18, Figure 3). Regarding claims 25, 53, and 69, the product is a container and the display surface is an outer wall of the container (Figure 1). Regarding

Art Unit: 1772

claim 26, the insert extends along substantially the entire perimeter of the outer wall such that two side edges of the insert form a seam (reference number 18, Figure 1). Note that the broadest reasonable interpretation of seam does not require that the edges forming the seam be in contact or abutting. Regarding claim 54, the two side edges of the insert form a straight seam (reference number 18, Figure 1). Regarding claims 70-72, these claims claim all that has been shown above with regards to claim 65 and also that the insert is within a recessed region. Guest anticipates the insert being placed in a recessed region of the container as shown in Figures 1 and 2. Regarding claims 73-80, Guest anticipates a an integrally formed closed-surface textured or roughened sleeve comprising an integral laminate having a textured or roughened layer (reference number 22, Figure 6) that has an array of features on an outer face and an image layer (reference number 28, Figure 6) on an inner face of the textured or roughened layer, the size and number of features being coordinated with the image since the laminate is a lenticular lens (see abstract). The laminate further comprises a backing layer (reference number 150, Figure 6) having an outer side immediately adjacent and in contact with an inner side of the image layer. The laminate also comprises a protection layer (reference number 160, Figure 6) having an

Art Unit: 1772

outer side immediately adjacent and in contact with the inner side of the backing layer. Finally, Guest anticipates the sleeve in which the integral laminate is integrally bonded to a substrate (wall of the container, reference number 12, col.13, 1.12-25) immediately adjacent and in contact with the inner side of the protection layer and the closed surface is formed by mating sides of the integral laminate that are bonded together by a continuous seam (reference number 18, Figure 1).

9. Claims 13, 19-21, 23, 25-26, 40, 47-49, 51, 53, 65-67, 69-80, and 89 are rejected under 35 U.S.C. 102(e) as being anticipated by Goggins (USPN 6,635,196).

Regarding claims 13, 40, and 89, the products formed by the methods of claims 1, 27, and 83 have the same structural limitations as the product claimed in claim 47, therefore claims 13, 40, and 89 will be rejected in the same manner as claim 47. Regarding claims 13, 19, 40, 47, and 65, Goggins anticipates a product for displaying images created with textured or roughened material such as lenticular lens material (see abstract). The product comprises a plastic display surface (the molded plastic that fills the mold in Figures 6-8) and a closed surface textured or roughened insert (reference number 10a, Figure 5) in abutting contact with the display surface. The insert includes

Art Unit: 1772

a textured or roughened layer (reference number 12, Figure 5) having a first surface (the outer surface of reference number 12 in Figure 5) and a second surface (the inner surface of reference number 12 in Figure 5). An ink layer (reference number 14, Figure 5) is bonded to the second surface of the textured or roughened layer, and a bonding and thermal protection substrate (reference number 16 or 18, Figure 5) is attached to and covering the ink layer. The product further comprises a means for retaining the insert in the abutting contact position on the display surface by bonding to the display surface. Regarding claims 20, 48, and 66, the retaining means comprises a bonding interface between the substrate and material of the plastic display surface (col.5, 1.56-67). Regarding claims 21, 49, and 67, the substrate comprises a material selected from the group consisting of vinyl plastic or opaque white ink (col.4, 1.26-30). Note an opaque white ink inherently either a solvent based coating or water-based coating since that covers these two groups of coatings includes all types of ink. Regarding claims 23 and 51, the retaining means comprises frame members connected to the display surface and abuttingly contacting exposed edges of the insert since the insert is inserted into the mold during formation and in the embodiment in which the insert forms a portion of the outer

Art Unit: 1772

surface of the cup such as a belly band (col.7, 1.54-57) the container would form on both the top edge and bottom edge of the insert. Regarding claims 25, 53, and 69, the product is a container and the display surface is an outer wall of the container (Figure 10). Regarding claim 26, the insert extends along substantially the entire perimeter of the outer wall such that two side edges of the insert form a seam (Figure 10 and col.7, 1.51-58). Note that the broadest reasonable interpretation of seam does not require that the edges forming the seam be in contact or abutting. Regarding claims 70-72, these claims claim all that has been shown above with regards to claim 65 and also that the insert is within a recessed region. Goggins anticipates the insert being placed in a recessed region of the container because the insert is placed along the outside wall of the mold when forming the cup and especially in the embodiment in which the insert forms a portion of the outer wall the molten plastic forming the cup would form around the edges of the insert, therefore forming a recessed region for the insert. Regarding claims 73-80, Goggins anticipates an integrally formed closed-surface textured or roughened sleeve comprising an integral laminate having a textured or roughened layer (reference number 12, Figure 2d) that has an array of features on an outer face and an image layer (reference number

Art Unit: 1772

14, Figure 2d) on an inner face of the textured or roughened layer, the size and number of features being coordinated with the image since the laminate is a lenticular lens (see abstract). The laminate further comprises a backing layer (reference number 20, Figure 2d) having an outer side immediately adjacent and in contact with an inner side of the image layer. The laminate also comprises a protection layer (reference number 18, Figure 2d) having an outer side immediately adjacent and in contact with the inner side of the backing layer. Finally, Goggins anticipates the sleeve in which the integral laminate is integrally bonded to a substrate (wall of the cup, Figures 6-8) immediately adjacent and in contact with the inner side of the protection layer and the closed surface is formed by mating sides of the integral laminate that are bonded together by a continuous seam (col.7, 1.51-58).

10. Claims 57-59 and 61-62 are rejected under 35 U.S.C. 102(e) as being anticipated by Goggins (USPN 6,490,092).

Regarding claim 57, Goggins anticipates a product for displaying images created with textured or roughened material (see abstract) comprising a paper display surface (reference number 22, Figure 8, col.8, 1.64-67). The product further comprises a closed-surface textured or roughened insert

Art Unit: 1772

(reference number 30, Figure 6) maintained in position adjacent the paper display surface. The insert includes a textured or roughened layer (reference number 28, Figure 8) having a first surface (the top surface of reference number 28, Figure 8) and a second surface (reference number 28a, Figure 8), and an ink layer (reference number 40, Figure 8) bonded to the second surface of the textured or roughened layer. The insert further comprises a bonding and thermal protection substrate (reference number 42, Figure 8) attached to the ink layer. Regarding claim 58, the sleeve is maintained in position adjacent the paper surface by an adhesive (reference number 44, Figure 8) between the substrate and the paper display surface. Regarding claim 59, the substrate comprises a material such as vinyl plastic or an opaque, white ink, which is inherently a solvent-based coating or water-based coating since all inks fall into one of those categories. Regarding claim 61, the product is a container and the display surface is an outer wall of the container (Figure 6 and col.8, 1.3-20). Regarding claim 62, the two side edges of the insert form a straight seam (Figure 6).

Art Unit: 1772

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

12. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

13. Claims 54-56 and 81-82 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goggins (USPN 6,635,196).

Regarding claims 54-56, Goggins teaches all that is claimed in claim 47 as shown above, and teaches that the sleeve is wrapped around the container to substantially cover the entire outer surface of the container (col.7, 1.51-58). Therefore, since a flat piece is wrapped around a container to cover the

Art Unit: 1772

container the sleeve must have a seam where the two side edges meet.

Goggins fails to teach the shape of the seam. However, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made that any known shape for the seam would be used to form the seam including a straight seam, sinusoidal seam or zig-zag seam, depending on the intended end result and appearance of the finished article, absent the showing of unexpected result.

Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to select a straight seam, sinusoidal seam, or zig-zag seam for the implicit seam of Goggins depending on the intended end result and appearance of the finished article, absent the showing of unexpected result.

Regarding claims 81-82, Goggins teaches an integrally formed closed surface textured or roughened sleeve (reference number 10a) comprises a textured or roughened layer (reference number 12, Figure 2c) comprising a collection of features on an outer face of the layer and an inner face opposed to the collection of features. The sleeve further comprises an outer bonding layer (reference number 20, Figure 2c) having an outer face adjacent the inner face of the textured layer and an ink

Art Unit: 1772

layer (reference number 14, Figure 2c) having an outer face adjacent the inner face of the outer bonding layer, and the size and features of the textured layer are coordinated with the image layer since the sleeve forms a lenticular lens material. The sleeve further comprises a paper core layer (reference number 22, Figure 2c and col.4, 1.55-60) having an outer face adjacent the inner face of the ink layer and an inner bonding layer having an outer face adjacent the inner face of the paper core for bonding the paper substrate to the molten plastic forming the container.

Goggins fails to teach the sleeve further comprising a clear core layer in the same embodiment as all of the other layers. However, Goggins teaches in an additional embodiment of Figure 2b that a clear core layer (reference number 16, Figure 2b) is added to the lenticular lens sleeve of Goggins between the textured layer and image layer in order to provide a special effect or enhance or provide contrast for the image (col.4, 1.25-45). One of ordinary skill in the art would have recognized that Figures 2b and 2c are used as examples to show the many different components that can be added to the sleeve of Goggins and therefore it would have been obvious to combine the components for particular purposes.

Art Unit: 1772

Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to add the clear core layer of the embodiment of Figure 2b to the embodiment of Figure 2c, in order to provide a special effect or enhance or provide contrast for the image, as taught by Goggins in the embodiment of Figure 2b.

14. Claims 55-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guest (USPN 6,490,093).

Guest teaches all that is claimed in claim 47 and teaches that the two side edges of the insert form a straight seam (reference number 18, Figure 1), but fails to teach the seam is sinusoidal or zig-zag. However, Guest teaches that in addition to the straight seam taught in Figure 1, the side edges of the insert are formed from a large number of other interweaving shapes and mating techniques to obtain the beneficial features of the container, which is to overcome the weakness inherent in a butt joint between the side edges of the insert (col.10, l.1-6). Therefore, it would have been to one having ordinary skill in the art that any interweaving shape seams would be used to form the seam between the side edges of the insert in order to overcome the weakness of a butt joint, as taught by Guest.

Art Unit: 1772

Thus, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to select a sinusoidal seam or zig-zag seam as the seam in Guest since both seams are interweaving shapes and would therefore overcome the weakness of a butt joint, as taught by Guest, and since the specific shape would be determined by one of ordinary skill depending on the intended end appearance of the finished product, absent the showing of unexpected result.

15. Claims 60 and 63-64 is rejected under 35 U.S.C. 103(a) as being unpatentable over Goggins (USPN 6,490,092) in view of Guest (USPN 6,490,093).

Regarding claim 60, Goggins teaches all that is claimed in claim 57 but fails to teach the thickness of the substrate layer. However, Guest teaches that substrates of ink or plastic on the backside of a lenticular lens sleeve molded to a container has a thickness in the range of 0.5 mils to 3 mils (col.12, l.24-27 and col.13, l.25-30) and that the exact thickness is determined based on the intended end result of the article. Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made that the thickness of the substrate of a lenticular lens sleeve should be determined by one of ordinary skill in the art

Art Unit: 1772

based on the intended end result of the article and that a typical range is within 0.5 mils and 3 mils, as taught by Guest.

Thus, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to select the thickness of the substrate layer of Goggins in the range between 0.5 mils and 3 mils since it is a typical range for a substrate for used for the same purpose as Goggins and since one of ordinary skill in the art would select the thickness desired based on the intended end result of the article, as taught by Guest.

Regarding claims 63-64, Goggins teaches all that is claimed in claim 57 and teaches that the two side edges of the insert form a seam (Figure 6). Goggins fails to teach that the seam is a sinusoidal or zig-zag seam. However, Guest teaches that in addition to a straight seam, interweaving shaped seams and mating techniques are used to bring the two side edges of the insert together to form the sleeve around the container, in order to overcome the weakness inherent in a typical butt joint (col.10, l.1-6). Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made that other shaped seams are used in place of straight seam joints in order to form an interweaving connection

Art Unit: 1772

that is inherently stronger than a typical straight seam, as taught by Guest.

Thus, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to form the seam of Goggins having an interweaving shape rather than a straight seam in order to form a stronger seam, and that sinusoidal or zig-zag shaped seams would be selected as interweaving shapes depending on the intended end appearance of the finished product, absent the showing of unexpected result.

#### ***Conclusion***

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kosugi et al (JP 04-027993 A); Brosh et al (USPN 6,251,566); Darr (USPN 4,802,295).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P. Bruenjes whose telephone number is 571-272-1489. The examiner can normally be reached on Monday thru Friday from 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the

Art Unit: 1772

organization where this application or proceeding is assigned is  
571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

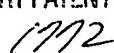
Christopher P Bruenjes

Examiner

Art Unit 1772

CPB  
CPB

February 16, 2006

  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  


2/20/06